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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,606	08/15/2000	Sean P. Burns	GIO-007-US	1629

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EXAMINER

MILLER, EDWARD A

ART UNIT	PAPER NUMBER
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3641
DATE MAILED: ~~8/27/03~~ 8/27/03
1MA 8/22/02

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary

Application No.

09/638,606

Applicant(s)

BURNS ET AL.

Examiner

Edward A. Miller

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 and 13-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3641

1. The reply filed on July 5, 2002 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

In Paper No. 6, the claims were rejected under 35 USC 102(b) under longstanding case law, based on a publication of applicants', dated more than one year prior to the instant continuation-in-part application. The action stated that it appeared that all the claims were anticipated, and so on. In the reply, applicants stated that the publication was "equivalent" to the instant application, and failed to address the cited case law. If applicants maintain their traversal, they are required by the applicable rules, 37 CFR 1.111(b and c) to clearly and specifically point out how the claims avoid the rejection. To urge explicit or implicit basis in the parent application of which this is only in part a continuation, totally ignores the basis of the stated rejection including the case law it was based upon. A complete and proper reply is required, 37 CFR 1.135(b), to avoid abandonment. Applicants have not pointed out how the changed scope of the instant claims, or the newly proffered claims, compared to the parent application, analogous to the publication cited, is identical to that originally set forth in the instant parent. Applicant has not discussed the cited case law. This, without more, must be acquiescence in the propriety and correctness of the cited case law, and its application to the instant case. Applicant is required to supply the omissions pointed out herein. The benefit of 37 CFR 1.135(c), based upon apparent inadvertence, is given.

See 37 CFR 1.111 and 1.135. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**



Creation date: 11-10-2003
Indexing Officer: ICHARLES - IRENE CHARLES
Team: OIPEBackFileIndexing
Dossier: 09638606

Legal Date: 10-01-2002

No.	Doccode	Number of pages
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Total number of pages: 3

Remarks:

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